

State of T. N. and Others

Vs

L. Krishnan and Others

Civil Appeal No. 1867 of 1992

(K. Ramaswamy, B.L. Hansaria, S.B. Majmudar JJ)

17.01.1996

ORDER

1. This appeal by special leave arises from the judgment of the Division Bench of the Madras High Court made in WP No. 6169 of 1983 on 22-4-1991. Notification under Section 4(1) of the Land Acquisition Act (Act 1 of 1894) (for short "the Act") was published on 29-8-1975 acquiring large extent of land for planned development of K.K. Nagar in Madras City. The declaration under Section 6 of the Act was published on 28-9-1978. The award under Section 11 of the Act was made in February 1983. The writ petition was filed on 28-7-1983 questioning the notification under Section 4(1) of the Act on the ground that the notification was vague and invalid since the Government had not formulated specific scheme for construction of the houses. That contention found favour with the High Court and consequently it quashed the notification in the first instance, which order was upheld by this Court in State of T.N. v. A. Mohd. Yousef [[1991] 4 SCC 224]. Following the said decision, this writ petition along with other writ petitions was allowed by the Division Bench. This Court in State in T.N. v. L. Krishnan [[1996] 1 SCC 250 : JT (1995) 8 SC 1] had held that the scheme as envisaged under the Tamil Nadu Housing Board Act was not required to be completely formulated before publication of the notification under Section 4(1) of the Act. The notification on that account, therefore, was not vague. Same contention has been raised in this appeal; but specific argument was made at the time that there is a distinguishing feature on factual background and that, therefore, it was required to be separately dealt with. Accordingly, this appeal was separated. Thus, we are hearing this appeal independently.

2. Shri A. Mariarputham, learned counsel for the appellants, contended that the respondent had laid their claim on the basis that the sanction for layout from the Director, Town Planning was obtained as early as in 1970 and the notifications were issued by the Government from time to time excluding such lands and on that premise the respondents claimed exclusion. But the Government after elaborate consideration in GOMs No. 583 dated 11-3-1983 had withdrawn the earlier notifications and several writ petitions were filed after that order was passed. The foundation on the basis of which the writ petition was filed was knocked of its bottom. The High Court was not, therefore, right in granting the relief to the respondents. Dr Shankar Ghosh, learned Senior Counsel for the respondents, contended that since the notifications had been quashed in respect of some other lands covered in the same notifications, the respondents stand in the same position as others and are entitled to the same benefit. Though we had adjourned the appeal to get particulars relating to the cases in which exclusion of the lands covered in the same notification and for what grounds was made, Mr Mariarputham stated that in spite of his best efforts to get the correct information, he was unable to get the information from the Government and that, therefore, he is not in a position to place any factual material on the basis of which the lands were withdrawn either by the orders of the Court and for what purpose. Reasons for such omission are not far to seek.

3. However, he has pointed out that the earlier orders by the court relate to the lands for the establishment of outstation bus stand and also wholesale fruit market. Since they also serve public purpose, the withdrawal of the notifications in respect thereof does not have any effect on the planned development under the scheme. Therefore, it cannot be said that there is any invalidity in the notification for being quashed. We find force in the contention. Dr Ghosh submitted that though the respondents are two families, the numbers are as many as 19 and they require construction of houses for self-occupation. The scheme being for the planned development of a residential township and since the land acquired by them is for that purpose, the land required by them may also be considered for exclusion for the construction of their own houses for residential purpose. The extent of land in question in this appeal is 20 acres and odd.

4. The question is : Whether the view of the High Court is correct in law ? The question of vagueness of the notification published under Section 4(1) is no longer res integra. The ratio in L. Krishnan case [(1996) 1 SCC 250 : JT (1995) 8 SC 1] covers the field. In State of T.N. v. Mahalakshmi Ammal [(1996) 7 SCC 269], this Court has considered the effect of GOMs No. 583 dated 11-3-1983 wherein guidelines issued for exemption were withdrawn. It was held that though the Government had issued notifications on earlier occasions giving benefit for exclusion of certain lands covered under the guidelines formulated therein, in view of large-scale misapplication of the guidelines for seeking exclusion of the lands covered under the scheme, the schemes are getting frustrated. Consequently, Government was justified in withdrawing the guidelines issued earlier. The view of the High Court that they are statutory notifications and confer right to get exemption from acquisition as per guidelines mentioned therein, is not correct. They are only administrative instructions issued by the Government for the purpose of consideration by the Housing Board but these guidelines being misused and misapplied, the Government, when it had power to issue guidelines, has same plenary power to withdraw the same. It is seen that the writ petition came to be filed not only after the GOMs concerned was withdrawn but also after the award came to be passed. After taking possession, all acquisition proceedings would become final except determination of compensation at different stages. Consequent to passing of the award, the State Government is entitled to take possession of the lands and after issuance of the notices under Section 12 of the Act, the lands stand vested in the State under Section 16 free from all encumbrances. Consequently, we do not find any infirmity in the notifications issued under Sections 4(1) and 6 of the Act and the award made by the Land Acquisition Officer.

5. It is seen that the very public purpose envisaged under the scheme is planned development of the city for residential purposes to relieve housing scarcity. Though a part of the lands was withdrawn for the purposes of establishing outstation bus stand and also wholesale fruit market, they being equally for other public purposes, the withdrawal of acquisition for those purposes will not have any effect on the notification issued under Section 4(1). But the respondents being the owners of the lands and the scheme being for the planned development for residential purpose, they too required the lands for construction of their own houses for their personal residence.

6. Under these circumstances, we think that while upholding the action of the State in acquiring the lands for planned development of the city, reasonable land may also be excluded for the actual personal residential purpose of the respondents who are 19 in number. In view of the large numbers of families, we think that 1 acre 50 cents of the land would be reasonable for the members of the families of the respondents to construct their own houses for personal occupation. On our direction, Mr M.N. Krishnamani, with the assistance of the local counsel, identified north-east corner of the land in Survey No. 167/1-B abutting the Punamally Highway road. The total extent of the land under Survey No. 167/1-B is 7 acres 81 cents. Out of which 1 acre 50 cents in a contiguous place

towards north-east is directed to be released from the acquisition so that the respondents would be able to construct their own residential houses for their personal residence in a compact block.

7. The order of the High Court is set aside and the notification stands upheld except to the above extent. The notification of withdrawal in respect of excluded land be issued under Section 48(1) within three months from the date of receipt of the order. The order of exclusion is not to be treated as a precedent. Only as a special case, in view of the special fact that large number of persons in two families require personal accommodation, we have given the above directions - that too on an undertaking that the respondents would use the same only for the personal residence.

8. The appeal is accordingly disposed of in the above terms. No costs.